IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12264 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

DAHIBEN BIJALBHAI MER
Versus
THE DISTRICT MAGISTRATE AND OTHERS

==========

Appearance :
MS DR KACHHAVAH for Petitioner,MR KAMLESH KACHHAVAH for Petitioner.
RULE SERVED BY DS for Respondent Nos. 1 - 2.
MR ND GOHIL, AGP for Respondent No. 3.

==========

CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 17/08/2006

ORAL JUDGMENT

This petition is filed by the husband of the petitioner. By filing this petition, the petitioner has challenged detention order of the detenue dated 24-02-2006, who is detained as a “bootlegger” under provisions of

Gujarat Prevention of Anti Social Activities Act ("PASA" for short). Along with the order of detention, the detenue is also served with the grounds of detention. In the grounds of detention, there is a reference to two criminal cases pending against the detenue. Both these cases registered under the provisions of the Bombay Prohibition Act. It is alleged that the detenue is dealing in foreign liquor. The detaining authority after arriving at subjective satisfaction has passed the aforesaid order of detention against the detenue. According to the detaining authority, the activities of the detenue are prejudicial to public health and public order.

Mr.Kacchavah, learned advocate for the petitioner vehemently submitted that except aforesaid criminal cases, there is no other material available for coming to the conclusion that the detenue is a "bootlegger". He further submitted that no statement of any independent witness is recorded by the detaining authority for coming to the conclusion that the activities of the detenue are prejudicial to public order or even tempo of life is disturbed by his activities. He further submitted that it cannot be said that the detenue is a bootlegger, simply because criminal cases are registered against her under the Bombay Prohibition Act and it can at the most be said that the detenue has violated provisions of law but it cannot be said that the detenue has violated public order or that her activities are prejudicial to public health. It is submitted by him that the authority has not applied its mind properly and came to the conclusion that the activity of the detenue is prejudicial to public health, even when there is no material on record in this behalf. In order to substantiate his say, learned advocate for the petitioner has relied upon the decision of the Supreme Court in District Collector, Ananthapur and another vs. V. Laxmanna reported in 2005 AIR SCW 1822. In the aforesaid case, the Supreme Court has observed as under in paragraph 7 :

> "7. We do not think this argument of the learned counsel can be accepted. If the detention is on the ground that the detenu is indulging in manufacture or transport or sale of arrack then that by itself would not become an activity prejudicial to the maintenance of public order because the same can be effectively dealt with under the provisions of the Excise Act but if the arrack sold by the detenu is dangerous to public health then under the Act, it becomes an activity prejudicial to the maintenance of public order, therefore, it becomes necessary for the detaining authority to be satisfied on material available to him that the arrack dealt with by the detenu is an arrack which is dangerous to public health to attract the provisions of the Act and if the detaining authority is satisfied that such material exists either in the form of report of the Chemical Examiner or otherwise copy of such material should also be given to the detenu to afford him an opportunity to make an effective representation.
>
> 8. Therefore, while holding that dealing with arrack which is dangerous to public health would become an act prejudicial to the maintenance of public order attracting the provisions of the Act. It must be held that it is obligatory for the detaining authority to provide the material on which it has based its conclusion on this point. Therefore, we are in agreement with the High Court that if the detaining authority is of the opinion that it is necessary to detain a person under the Act to prevent him from indulging in sale of goods dangerous for human consumption the same should be based on some material and the copies of such material should be given to the detenu."

Mr.N.D.Gohil, learned AGP is not in a position to substantiate his say that the activities of the detenue are prejudicial to public health.

It is not in dispute that except pending criminal cases, there is no other material for coming to the conclusion that the activities of the detenue are prejudicial to public order or public health and not even the report of the laboratory is available on record. It is required to be noted that in the detention order it is not mentioned as to how the activity of the detenue is prejudicial to public health and it can safely be said that

the detenue may be guilty of violating law of the land but it cannot be said that the activity of the detenue is prejudicial to public health.

Considering the aforesaid aspect of the matter as well as after considering the judgement of the Supreme Court and considering the fact that there is nothing to show that the activity of the detenue is prejudicial to public health, at the most it can be said that the detenue is guilty of violating law and order but it cannot be said that the activity of the detenue is prejudicial to public health. Therefore, the impugned order of detention is required to be quashed and set aside.

In order to see that the detenu is not tempted to commit the offence again learned advocate for the petitioner has made a voluntary statement that the detenue will not enter District Magistrate area of Bhavnagar upto 31st October, 2006 except for attending the criminal cases. This voluntary statement is recorded. It is for the concerned authorities to monitor the same.

In view of what is stated herein above, this petition is allowed. Order of detention dated 24-2-2006 is quashed and set aside. Detenue – Dahiben W/o. Bijalbhai Karnabhai Mer is ordered to be released forthwith unless her presence is required in connection with any other case. Rule is made absolute with no order as to costs.

(P.B.MAJMUDAR, J.)

/malek